

Document Review:

FCC NOTICE OF PROPOSED RULEMAKING AND NOTICE OF INQUIRY (Adopted 4/20/2017)

Page #	Section	Question or Statement	Reviewer Comment
4	7 (¶ 2)	"Are there ways in which applicants are causing or contributing to unnecessary delay in the processing of their siting applications?"	Understanding of Section 106 by the consultants who submit the 620 and 621 forms for telecommunications providers varies, and the quality of submittals does sometimes correlate to review time. For example, findings of direct and indirect effect on historic properties must be supported. If the applicant does not provide supportable evidence for a finding of effect, we request additional information via FCC's e-106 site. If the applicant does not regularly check this site, the review time increases, requiring the reviewer to contact the applicant by e-mail or telephone.
4	7 (¶ 2)	"Are there siting practices that applicants can or should adopt that will facilitate faster local review while still achieving the deployment of infrastructure necessary to support advanced wireless broadband services?"	The State of Alaska Office of History & Archaeology administers the <i>Alaska Heritage Resources Survey (AHRS) Database</i> that contains information on the locations of known historic properties. Although public access to the database is restricted, we urge the consultants who submit 620 and 621 forms to apply for access, in order to determine if a proposed tower site is within or adjacent to an area where National Register-eligible properties have been identified.
4	8 (¶3)	<i>Deemed Granted</i>	Alaska SHPO adheres to a 30-day "deemed granted" review period, per CFR §800.4(d)(1), the implementing regulations of the National Historic Preservation Act of 1966. The AK SHPO staff reviewer checks the FCC's e-106 site a minimum of 3 times a week. However, if we request additional information from the applicant, the review clock is put on hold until the information is received.
5	9 (¶2)	Three proposed "remedies"	Comments on three proposed "remedies" for agencies' failure to satisfy their [review] obligations under Section 332(c)(7)(B)(ii)
5	10 (¶3)	#1 "Irrebuttable Presumption"	Creating an "irrebuttable presumption" assumes that the applicant seeking to install the cell tower has submitted all the information required for a State or local review <u>and</u> has made a reasonable and good faith effort to consult with all interested parties, <i>especially Native American Tribes</i> , <u>before</u> submitting the request for local and State review. We suggest that the FCC make it clear to parties seeking a review of proposed cell tower installations that "irrebuttable presumption" is valid only if the 620 or 621 form submitted is complete.
7	14	#2: "Lapse of State and Local Government' Authority"	This "remedy" creates a dangerous precedent, in that it takes away the ability of communities to protect their historic properties and enforce cell tower ordinances created to protect the visual integrity of a community and/or to address the concerns of its citizens regarding cell tower safety.
7	15	#3: "Preemption Rule"	This approach does not take into consideration the number of telecommunications companies submitting applications at any given time proportionate to the number of employees of a state or local government agency that are qualified and available to review the 620/621 applications. If an agency has only one or two reviewers and multiple cell tower installation applications are submitted all at once, pre-empting Section 106 review is only a short-term "solution," and sets a dangerous precedent: that industry can forgo compliance with "inconvenient" regulations.
8-9	17-18	"Reasonable Period of Time to Act on Applications"	If seeking to equate review times for facility deployments covered by the Spectrum Act with deployments not covered, the FCC should be mindful of the varying number and type of natural and cultural resources from community to community and state to state, and raise, not lower, the review times for both to 90 days rather than reduce the review time for both to 60 days.
9	19	Different categories of deployments	If a collocation is proposed on a historic building, rather than on an existing antenna, the local government may strenuously object, even if the State reviewer approves the application, e.g, even if the building is significant for its association with a historical event, rather than for its architecture, the community may have a proprietary feeling toward the building.

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9	20	When should the shot clock begin running?	Assuming the request for review is submitted via the FCC e-106 site, the clock should begin running on the day the application is posted (or the following work day if the application is posted after 5:00 p.m.) For submittal to reviewers not using e-106, the request should be sent either as an e-mail attachment (read-receipt requested) or, if mailed, return-receipt requested. The clock should begin when the application is received by the reviewing agency.
13	28	Radio spectrum licensees (Section 1.137(a)(4): EA required if the proposed construction may affect historic properties.	<p>The AK SHPO does not always review environmental assessments pursuant to NEPA. Our specific responsibility relates to NHPA. If the proposed tower construction <i>will</i> (not <i>may</i>) have a <u>direct</u> effect on a historic property, the consultant responsible for the preparation/submittal of the 620/621 Form would notify their client before submitting the 620/621 form on e-106. We have not encountered any 620/621 form submittals for proposed towers or collocations with a direct effect on historic properties.</p> <p>However, when a 621 form was received for one of the many “Twilight Towers,” in Alaska, our reviewer determined that the tower had/has an adverse indirect (visual) effect on a historic property across the street from the tower. In this case, AK SHPO consulted with the telecommunications company, and a memorandum of agreement acceptable to all parties was created to mitigate the adverse effect.</p>
13	30	Contacting Native Tribes and Alaska Native Community Associations	TCNS seems to have worked well for the consultants who submit 620 and 621 forms on behalf of a telecommunications provider. The consultant provides a 30-day response time to each Tribe contacted via TCNS. If, after 30 days, the Tribe has not responded, the consultant sends a follow-up inquiry. If a response to the 2 nd inquiry is not received within 2 weeks, the consultant may assume “no objection” from the Tribe.
14	32-34	Section 106 Review Process	<p>The time it takes for a Section 106 review for an antenna collocation or cell tower installation depends a great deal on the qualifications of the consultant who prepared the 620/621 form submitted on behalf of the telecommunications provider. If the form is incomplete or the finding of effect lacks supporting evidence, SHPO staff requests the missing information via e-106, and the 30-day review clock stops until the additional information is received.</p> <p>The consultant is responsible for periodically checking the e-106 site for such messages; however, if no response is received within a week, AK SHPO staff typically follows up via e-mail or telephone. We check the FCC e-106 site at least three days a week, and complete our review of the applications submitted within 3 to 5 days, depending on the volume of forms received.</p> <p>We recommend that telecommunications providers review the booklet “Using Professional Consultants in Preservation” (National Trust for Historic Preservation) prior to selecting a contractor to submit Forms 620 and 621.</p>
14-15	35-37	Tribal review of Forms 620 and 621.	AK SHPO staff is not aware of any problems with Tribal review in Alaska. None of the 229 federally recognized Tribes and Tribal Organizations in Alaska have, to our knowledge, charged a fee for their review of proposed antenna collocations or tower installations.
16	38	Exorbitant Tribal-review fees	Please see our comments regarding Sections 35-37.
16	39	Excessive length of SHPO review is responsible for delay in deployment of antenna collocations and cell tower installations	<p><i>We strongly disagree with this contention.</i> Our average response time is 3-5 days from receipt of request via e106. Cell tower deployment and antenna collocation delays that we are aware of resulted from:</p> <ul style="list-style-type: none"> • Failure of the telecommunications provider to submit a request for Section 106 review prior to tower installation • Local government not providing their comments to the consultant in a timely manner <p>AK SHPO staff review is not duplicative of review by any local government or review by National Park Service staff.</p>

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16-17	40	NEPA compliance	SHPO staff does not always review or prepare NEPA documents. However, we do recommend that the author/s of NEPA documentation consult us regarding historic properties under NHPA within the project's Area of Potential Effects prior to submitting the NEPA document. Their NHPA compliance should inform their NEPA documents.	
18-19	45	Tribal member as consultant	<p>Since Tribes are not required to divulge the locations of sacred sites and burial grounds, what type of research are they charging for? Are they submitting reports to the consultants/telecommunication providers? The ACHP's assertion that "if the applicant asks for <i>specific information and documentation</i> from a Tribal Nation, then the Tribal Nation is being treated as a contractor or consultant" is valid.</p> <p>However, our understanding of the Tribal/Native Hawaiian Organization (NHO) involvement in the Section 106 process is that each Tribe/NHO who has expressed interest in specific areas/regions of the state is provided the <i>opportunity to comment</i> on any <u>known sites</u> within the APE that are important to them, not asked to conduct research to <i>discover</i> sites that are important to them. We are curious how the practice of Tribes/NHOs charging a fee to comment on tower applications got started, given ACHP guidance that "the agency or applicant is not required to pay the Tribe for providing its views?"</p>	
19	46	What information about a prospective collocation or tower installation should be provided to a Tribal Nation/NHO?	The Area of Potential Effects (based on height of tower and shown on a map), the location of the project site on a map with latitude/longitude coordinates, photographs of the site, street address (if applicable), the type and height of tower or antenna (with an illustration of the tower type), when the project is scheduled to begin, and the location and type of service road(s) (gravel? paved?) that will be constructed to service the tower.	
19	47	"... some Tribal Nations have indicated they assess a flat upfront fee for all applications as a way to recover costs for their review of all TCNS applications, thereby eliminating the administrative burden of calculating actual costs for each case."	Please see comments on Sections 35-37.	
19-20	48	"What steps, if any, can the Commission take to issue our own guidance on the circumstances in our process when the Tribal Nation is expressing its views and no compensation by the applicant is required by ACHP guidance?"	36 CFR § 800.2 defines participants in the Section 106 process to include Indian Tribes and Native Hawaiian Organizations and the public. However, review of the 620 and 621 forms is voluntary, not mandatory. Neither the Tribes nor the public are being asked to conduct research for tower installations and antenna collocations in Alaska.	
20	49	"What input, if any, should the Commission provide to the ACHP on potential modifications to ACHP guidance?"	<p>ACHP guidance on this subject is clear. Indian Tribes/NHO should be compensated if they are hired to conduct research, provide a report, or monitor project excavation work. Otherwise, the Government-to-Government consultation process set forth in 36 CFR § 800.2 (c)(ii)(C) should be followed.</p> <p>If the FCC seeks to resolve the question of paying a fee as compensation for a requested review of the intended location for a cell tower, FCC should simply state this clearly and up front, in all official correspondence to consulting parties. Alternatively, FCC could state the circumstances in which they would consider paying a fee, or requiring their applicant to pay a fee for services.</p>	
20	50	Amount of Fees Required	Please refer to our comments on Sections 45 through 49.	

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20	51	Establish a fee schedule for consultation with Indian Tribes/NHOs.	Please refer to our comments on Sections 45 through 49.	
20-21	52	What weight or impact might a fee schedule have on [FCC] processes?	Please refer to our comments on Sections 45 through 49.	
21	53	Geographic Areas of Interest: what actions should the FCC take to mitigate the burden of contacting up to 30 different Tribal Nations?	<p>Perhaps the telecommunications provider could contact tribes on an annual basis to provide them a list of facilities that are expected to be on the "docket" in the coming year.</p> <p>If the burden of contacting up to 30 different Tribal Nations is taking too much time, the telecommunications providers or their consultants should determine an efficient method of contacting the Tribes/NHO and initiate the Section 106 process well in advance of the projected date for tower installation. If there are 30 different Tribal Nations to be contacted, perhaps the telecommunications provider or their consultant should supplement their workforce so that all 30 request for comments are sent out on the same date, and second requests (14-day reply window) are sent out to those Tribes/NHOs who do not respond within 30 days. Then a six-week window for preparation of the 620 and 621 forms + 30 days for SHPO review could be built into the tower deployment and antenna collocation schedules.</p>	
21	54	Should TCNS be modified to retain information on areas of concern?	It is the responsibility of the telecommunications provider or their consultant to contact the SHPO in the state where the tower is to be deployed for information regarding any areas of concern. Although many states restrict public access to the locations of archaeological sites, these sites could be avoided by consulting with SHPO well in advance of the tower deployment to determine if the proposed area of potential effects of a tower is or is not within the area of potential effects for a National Register-eligible site.	
21-22	55	Tribal site monitor	<p>A Tribal Site Monitor should be compensated at a rate agreed upon by the Tribe and the telecommunications provider.</p> <p>If the city, borough/county, or SHPO has identified the area of potential effects for a proposed tower as an area of concern, every effort should be made to select an alternant site for the tower.</p> <p>If any objects are unearthed during excavation, the SHPO should be contacted before excavation resumes. Monitoring results (date, location, what was unearthed during excavation, and several photos) should be an appendix in the tower deployment report; copies of the report could be available upon request to interested Tribes/NHOs and the public, with certain information regarding specific locations or sacred objects unearthed during excavation redacted at the Tribe's request.</p>	
22	57	Adjudication of procedural disagreements by the Commission	Yes	
22	58	Government-to-Government consultation to resolve fee disputes	Although the ACHP has issued some guidance on the topic, there is nothing in 36 CFR §800 Section 106 that addresses payment for comments.	
22	59	Negotiated Alternative	Why is the 2012 ACHP guidance document "Consultation with Indian Tribes in the Section 106 Process," no longer applicable?	
22	60	Lack of Response to Contacts	Please refer to our comments on Sections 45 through 49 and 53.	

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24	67	Pole replacements	If the new pole is not substantially different in shape or taller than the original, and the original has been evaluated according to the Section 106 process, the replacement should not be required to be submitted for Section 106 review.
26	72	Review of Collocations of Wireless Antennas	The FCC Nationwide Programmatic Agreement for Collocation of Wireless Antennas, as amended in August 2016, seems to be working well in Alaska.
26	73	Collocations located between 50 and 250 feet from a historic district.	<i>No. The area of potential effects should not be reduced to 50 feet, especially if the new antennas are substantially larger.</i> Most of the collocations we review in Alaska are on towers that are 200 feet or less in height, and therefore the 1/2-mile area of potential effects is applicable. If a tower with antennas causes an indirect adverse effect to historic properties, and the tower was not submitted for Section 106 review prior to its installation, then the communications provider must consult with the AK SHPO to create an MOA agreed to by all parties to mitigate the adverse effect. As soon as the MOA is signed, the collocation can proceed. Sometimes, visual effect is naturally mitigated by the topography or by dense vegetation within the 1/2-mile radius.
26-27	74	Exclude from review non-substantial collocations involving no ground disturbance and no substantial increase in size.	Yes. That seems to be a reasonable exclusion/reasonable 2 nd Amendment to the Collocation PA. The Tribes / Tribal Organizations in Alaska rarely provide comments on any of the "request for comments" sent via TCNS by the consultants for telecommunication providers. This may be because the tower locations are not near to where they live. The concerns of one Tribe regarding the installation site of a new tower were resolved by a visit to the proposed installation site by a Tribal representative, a State agency representative, and an archaeologist.
27	75	Exclude from Section 106 review certain collocations that have been reviewed and approved by a local Certified Local Government or similar local Section 106 review body.	<i>We oppose this proposal for several reasons.</i> The members of a Certified Local Government are not necessarily qualified (36 CFR § 800.(a)1) to evaluate the effect of collocations. Also, CLGs are not restricted by a 30-day-review-limit mandate. This proposal would probably lengthen the amount of time for review, rather than shorten it, because the CLGs would likely seek input from the community, and several communities in Alaska are working on ordinances to <i>restrict</i> the placement of cell towers. Lastly, it sets a dangerous precedent of exempting selected federal actions from Section 106 review.
28	77	Effect of Section 106 review when tower management companies own the towers rather than the licensee.	Communications providers or their management companies have ignored the requirement for Section 106 review for communications towers for decades. It probably doesn't matter what entity manages or owns the towers. Part of the licensing application should be questions on Section 106 compliance.
30	81	Definitive solution to the <i>Twilight Towers</i> issue.	Certainly, antenna collocation is preferable to the construction of additional towers, but total exemption from Section 106 compliance sends the wrong message. For instance, how many <i>Twilight Towers</i> were installed on archaeological sites? Perhaps part of the reluctance of <i>Twilight Tower</i> owners to comply with Section 106 may be the length and complexity of the FCC's 620 and 621 Forms. Revisions to these forms might help with compliance.
30-31	83	What is the likelihood that adverse effect to historic properties from <i>Twilight Towers</i> could be mitigated?	It depends on the type and extent of the adverse effect. A recently signed MOA among FCC, GCI, Alaska SHPO, the Diocese of Sitka and Alaska, and the Russian Orthodox Sacred Sites in Alaska specifies two measures for mitigating the adverse indirect (visual) effect of a "dish" tower on a nearby National Register-listed Russian Orthodox Church. The mitigation specifies 1) a monetary donation to the local church to cover needed repairs/maintenance work on the building and 2) updating the National Register Nomination Form for the Church.

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31	84	Tower-by-Tower Approach to Section 106 review of collocations on Twilight Towers	Such an exemption from Section 106 review of collocations on Twilight Towers sends the wrong message regarding the federal requirement for Section 106 review. It also doesn't seem fair to the owners of Twilight Towers who <i>have</i> submitted 620 and 621 forms for review. (for example, the \$600,000 fine FCC levied on GCI for non-compliance with Section 106). Requesting SHPOs to conduct "expedited reviews" of collocations on Twilight Towers would not accomplish much: it is likely that many SHPOs do not take 30 days to review e-106 submittals. The 620 and 621 forms submitted to the AK SHPO via the FCC e-106 site are typically reviewed and returned within 3 to 5 days.	
31	85	Approach to encourage a streamlined Section 106 Review of collocations on Twilight Towers.	This would require an amendment to the FCC Collocation PA. The amendment and revision processes would probably take over a year or more to implement, but would provide the best solution to the Twilight Towers collocation situation.	
32	89	Use relevant statutory terms to streamline local reviews.	How would such a regulation be uniformly enforced, given the variation in staffing and expertise of local review bodies? What is a "reasonable amount of time," given these differences? Also, there may be local ordinances already in place that regulate the height and location of certain towers.	
34	92	What is the proper role of aesthetic considerations in the local review process?	The role of aesthetic considerations is extremely important in the local review process, because it is a prime factor in preserving the qualities that make a community a desirable place to live. In our experience, members of local review boards are quick to respond to a request for comments concerning proposed cell tower installations.	
35-36	96	Restriction by State or local governments on the installation of new facilities/upgrading of existing facilities in existing rights-of way.	We are not aware of any restrictions on the installations of towers, other than completing the NEPA/Section 106 process. Two Alaskan communities (Girdwood and Anchorage) recently worked with telecommunications providers to come to a mutually satisfactory compromise for the installation of a cell tower in a ski resort and a cell tower in a municipal park: "stealth" tree towers.	
36	97	State or local restrictions on the deployment of telecommunication towers that are more burdensome than the restrictions on non-telecom deployments.	We do not believe this is the case in Alaska, especially since telecommunication providers deployed towers throughout Alaska <i>for decades</i> without bothering to comply with NEPA or Section 106. The FCC's 620 and 621 forms are likely more burdensome to telecom providers than any state or local restrictions.	
40	A2	Streamlining the NEPA/Section 106 compliance requirements for "Twilight Towers."	Streamlining the requirements for Section 106/NEPA compliance for companies that never bothered to comply with Section 106/NEPA initially does not seem fair to the companies who have complied. However, it is a bit late to evaluate direct effect to archaeological resources from these towers. So perhaps the requirement for an archaeological survey could be removed. However, mitigation for adverse visual effect (Section 106) should be addressed, if necessary. Or perhaps streamline collocation on existing monopole and self-supporting lattice towers by allowing those, in return for the telecom provider creating a list & map (with GPS coordinates) of their towers for the SHPO/THPO.	
41	C-4	Estimate of the number of telecom providers in Alaska who qualify as a small business.	We are not aware of any telecom providers in Alaska who are small businesses.	